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101st Congress
1st Session

SENATE

DOCUMENT
101-8

IMPEACHMENT OF JUDGE WALTER L. NIXON, JR.

CONSTITUTIONAL PROVISIONS; RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS; ARTICLES OF IMPEACHMENT AGAINST JUDGE WALTER L. NIXON, JR.; JUDGE NIXON'S ANSWER; AND REPLICATION OF THE HOUSE OF REPRESENTATIVES

Printed at the direction of WALTER J. STEWART, Secretary of the Senate, pursuant to S. Res. 127, 101st Cong., 1st Sess. (1989)

MAY 11, 1989.—Ordered to be printed

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101ST CONGRESS
1ST SESSION

S. RES. 127

To provide for issuance of a summons and for related procedures concerning the articles of impeachment against Walter L. Nixon, Jr.

IN THE SENATE OF THE UNITED STATES

MAY 11 (legislative day, JANUARY 3), 1989

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to

---

RESOLUTION

To provide for issuance of a summons and for related procedures concerning the articles of impeachment against Walter L. Nixon, Jr.

Resolved, That a summons shall be issued which commands Walter L. Nixon, Jr., to file with the Secretary of the Senate an answer to the articles of impeachment no later than May 31, 1989, and thereafter to abide by, obey, and perform such orders, directions, and judgments as the Senate shall make in the premises, according to the Constitution and laws of the United States.

SEC. 2. The Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or another employee of the Senate in serving the summons.

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SEC. 3. The Secretary shall notify the House of Representatives of the filing of the answer and shall provide a copy of the answer to the House.

SEC. 4. The Managers on the part of the House may file with the Secretary of the Senate a replication no later than June 12, 1989.

SEC. 5. The Secretary shall notify counsel for Walter L. Nixon, Jr., of the filing of a replication, and shall provide counsel with a copy.

SEC. 6. The Secretary shall provide the answer and the replication, if any, to the Presiding Officer of the Senate on the first day the Senate is in session after the Secretary receives them, and the Presiding Officer shall cause the answer and replication, if any, to be printed in the Senate Journal and in the Congressional Record. If a timely answer has not been filed the Presiding Officer shall cause a plea of not guilty to be entered.

SEC. 7. The articles of impeachment, the answer, and the replication, if any, together with the provisions of the Constitution on impeachment, and the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, shall be printed under the direction of the Secretary as a Senate document.

SEC. 8. The provisions of this resolution shall govern notwithstanding any provisions to the contrary in the Rules

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of Procedure and Practice in the Senate When Sitting on Impeachment Trials.

SEC. 9. The Secretary shall notify the House of Representatives of this resolution.

○

II. CONSTITUTIONAL PROVISIONS ON IMPEACHMENT

The provisions of the United States Constitution which apply specifically to impeachment are as follows:

Article I, Section 2, Clause 5

The House of Representatives . . . shall have the sole Power of Impeachment.

Article I, Section 3, Clauses 6 and 7

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Article II, Section 2, Clause 1

The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Article II, Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III, Section 2, Clause 3

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; . . .

III. RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS

I. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

II. When the managers of an impeachment shall be introduced at the bar of the Senate and shall signify that they are ready to exhibit articles of impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant at Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against ——— ———"; after which the articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock after noon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles and shall continue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until

final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the Presiding Officer shall administer the oath hereinafter provided to the Members of the Senate then present and to the other Members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States or the Vice President of the United States, upon whom the powers and duties of the Office of President shall have devolved, shall be impeached, the Chief Justice of the United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the Presiding Officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice shall be administered the oath by the Presiding Officer of the Senate and shall preside over the Senate during the consideration of said articles and upon the trial of the person impeached therein.

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to

enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule on all questions of evidence including, but not limited to, questions of relevancy, materiality, and redundancy of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision without debate; or he may at his option, in the first instance, submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be taken in accordance with the Standing Rules of the Senate.

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the person impeached, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearances as shall be named in such precept, either by the delivery of an attested copy thereof to the person impeached, or if that cannot conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some

conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the person impeached to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the person impeached, after service, shall fail to appear, either in person or by attorney, on the day so fixed thereof as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

IX. At 12:30 o'clock afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following, viz: "I, ——— ———, do solemnly swear that the return made by me upon the process issued on the ——— day of ———, by the Senate of the United States, against ——— ——— is truly made, and that I have performed such service as therein described: So help me God." Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing and the capacity in which he appears. If he does not appear, either personally or by agent or attorney, the same shall be recorded.

XI. That in the trial of any impeachment the Presiding Officer of the Senate, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

XII. At 12:30 o'clock afternoon, or at such other hour as the Senate may order, of the day appointed for the trail of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ——— ———, in the Senate Chamber.

XIII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 12 o'clock m.; and when the hour shall arrive, the Presiding Officer upon such trial shall cause proclamation to be made, and the business of the trial

shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIV. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

XV. Counsel for the parties shall be admitted to appear and be heard upon an impeachment.

XVI. All motions, objections, requests, or applications whether relating to the procedure of the Senate or relating immediately to the trial (including questions with respect to admission of evidence or other questions arising during the trial) made by the parties or their counsel shall be addressed to the Presiding Officer only, and if he, or any Senator, shall require it, they shall be committed to writing, and read at the Secretary's table.

XVII. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

XVIII. If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

XIX. If a Senator wishes a question to be put to a witness, or to a manager, or to counsel of the person impeached, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer. The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. Ruling on any such objection shall be made as provided in Rule VII. It shall not be in order for any Senator to engage in colloquy.

XX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to

close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record.

XXI. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour (unless the Senate otherwise orders) on each side.

XXII. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives.

XXIII. An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for a period not to exceed one day or adjourns *sine die*. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the Members present, a judgment of acquittal shall be entered; but if the person impeached shall be convicted upon any such article by the votes of two-thirds of the Members present, the Senate may proceed to the consideration of such other matters as may be determined to be appropriate prior to pronouncing judgment. Upon pronouncing judgment, a certified copy of such judgment shall be deposited in the office of the Secretary of State. A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order.

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Form of putting the question on each article of impeachment

The Presiding Officer shall first state the question; thereafter each Senator, as his name is called, shall rise in his place and answer: guilty or not guilty.

XXIV. All the orders and decisions may be acted upon without objection, or, if objection is heard, the orders and decisions shall be voted on without debate by yeas and nays, which shall be entered on the record, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no Member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the Members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not on the final question on each article of impeachment.

XXV. Witnesses shall be sworn in the following form, viz: "You, ——— ———, do swear (or affirm, as the case may be) that the evidence you shall give in the case now pending between the United States and ——— ———, shall be the truth, the whole truth, and nothing but the truth: So help you God." Which oath shall be administered by the Secretary, or any other duly authorized person.

Form of a subpena to be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel

To ——— ———, greeting:

You and each of you are hereby commanded to appear before the Senate of the United States, on the —— day of ——, at the Senate Chamber in the city of Washington, then and there to testify your knowledge in the cause

which is before the Senate in which the House of Representatives have impeached ——— ———.

Fail not.

Witness ——— ———, and Presiding Officer of the Senate, at the city of Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States the ——.

———— ————,
Presiding Officer of the Senate.

Form of direction for the service of said subpena

The Senate of the United States to ——— ———, greeting:

You are hereby commanded to serve and return the within subpena according to law.

Dated at Washington, this ——— day of ———, in the year of our Lord ———, and of the Independence of the United States the ——.

———— ————,
Secretary of the Senate.

Form of oath to be administered to the Members of the Senate and the Presiding Officer sitting in the trial of impeachments

"I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of ——— ———, now pending, I will do impartial justice according to the Constitution and laws: So help me God."

Form of summons to be issued and served upon the person impeached

THE UNITED STATES OF AMERICA, SS:

The Senate of the United States to ——— ———, greeting:

Whereas the House of Representatives of the United States of America did, on the —— day of ——, exhibit to the Senate articles of impeachment against you, the said ——— ———, in the words following:

[Here insert the articles]

And demand that you, the said ——— ———, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

You, the said ——— ———, are therefore hereby summoned to be and appear before the Senate of the United States of America at their Chamber in the city of Washington, on the —— day of ——, at —— o'clock ——, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness ——— ———, and Presiding Officer of the said Senate, at the city of Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States the ———.

———— ————,
Presiding Officer of the Senate.

Form of precept to be indorsed on said writ of summons

THE UNITED STATES OF AMERICA, SS:

The Senate of the United States to ——— ———, greeting:

You are hereby commanded to deliver to and leave with ——— ———, if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least —— days before the appearance day mentioned in the said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the appearance day mentioned in the said writ of summons.

Witness ——— ———, and Presiding Officer of the Senate, at the city of Washington, this —— day of —— in the year of our Lord ——, and of the Independence of the United States the ——.

———— ————,

Presiding Officer of the Senate.

All process shall be served by the Sergeant at Arms of the Senate, unless otherwise ordered by the Senate.

XXVI. If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

101ST CONGRESS
1ST SESSION

H. RES. 87

IN THE SENATE OF THE UNITED STATES

MAY 11 (legislative day, JANUARY 3), 1989
Received

RESOLUTION

Impeaching Walter L. Nixon, Jr., Judge of the United States District Court for the Southern District of Mississippi, of High Crimes and Misdemeanors

Resolved, That Walter L. Nixon, Jr., a judge of the United States District Court for the Southern District of Mississippi, be impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against Walter L. Nixon, Jr., a judge of the United States District Court for the Southern District of Mississippi, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi (Hattiesburg Division) to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the criminal prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

ARTICLE II

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would tell

the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Judge Nixon had nothing whatsoever officially or unofficially to do with the Drew Fairchild case in Federal court or State court; and that Judge Nixon "never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, in any way influence anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

ARTICLE III

By virtue of his office as a judge of the United States District Court for the Southern District of Mississippi, Judge Nixon is required to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to obey the laws of the United States.

Judge Nixon has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, disobeyed the laws of the United States and brought disrepute on the Federal courts and the administration of justice by the Federal courts by the following:

After entering into an oil and gas investment with Wiley Fairchild, Judge Nixon conversed with Wiley Fairchild, Carroll Ingram, and Forrest County District Attorney Paul Holmes concerning the State criminal drug conspiracy prosecution of Drew Fairchild, the son of Wiley Fairchild, and thereafter concealed those conversations as follows:

(1) Judge Nixon concealed those conversations through one or more material false or misleading statements knowingly made to an attorney from the United States Department of Justice and a special agent of the Federal Bureau of Investigation during an interview of Judge Nixon conducted in Biloxi, Mississippi, on April 19, 1984. The substance of the false or misleading statements included the following:

(A) Judge Nixon never discussed with Wiley Fairchild anything about Wiley's son's case.

(B) Wiley Fairchild never brought up his son's case.

(C) At the time of the interview Judge Nixon had no knowledge of the Drew Fairchild case and did not even know Drew Fairchild existed, except for what the judge previously read in the newspaper and what he learned from the questioners in the interview.

(D) Nothing was done or nothing was ever mentioned about Wiley Fairchild's son.

(E) Judge Nixon had never heard about the Drew Fairchild case, except what he told the questioners in the interview, and certainly had nothing to do with the case.

(F) Judge Nixon had done nothing to influence the Drew Fairchild case.

(G) State prosecutor Paul Holmes never talked to Judge Nixon about the Drew Fairchild case.

(2) Judge Nixon further concealed his conversations with Wiley Fairchild, Paul Holmes, and Carroll Ingram concerning the Drew Fairchild case by knowingly giving one or more material false or misleading statements to a Federal grand jury during testimony under oath in Hattiesburg, Mississippi, on July 18, 1984. The substance of the false or misleading statements included the following:

(A) Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

(B) To the best of his knowledge and recollection, Judge Nixon did not know of any reason he would have met with Wiley Fairchild after the

Nixon-Fairchild oil and gas investment was finalized in February 1981.

(C) Judge Nixon gave the grand jury all the information that he had and that he could, and had withheld nothing during his grand jury testimony.

(D) Judge Nixon had nothing whatsoever unofficially to do with the Drew Fairchild criminal case in State court.

(E) Judge Nixon never talked to anyone, including the State prosecutor, about the Drew Fairchild case.

(F) Judge Nixon never had a thing to do with the Drew Fairchild case at all.

(G) Judge Nixon "never talked to anyone, State or Federal, prosecutor or judge, in any way

influence anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

JIM WRIGHT,
Speaker of the House of Representatives.

Attest: DONNALD K. ANDERSON,
Clerk.

V. ANSWER BY JUDGE WALTER L. NIXON, JR.

The PRESIDING OFFICER. The Chair submits to the Senate for printing, in the Senate Journal, and in the CONGRESSIONAL RECORD, the answer by Judge Walter L. Nixon, Jr., to the articles of impeachment against Judge Nixon, pursuant to Senate Resolution 127, 101st Congress, 1st Session, which answer was received, by the Secretary of the Senate, on May 31, 1989.

The material is as follows:

ROPES & GRAY,
Washington, DC, May 31, 1989.

Re Judge Nixon.

WALTER J. STEWART,
Secretary of the Senate, U.S. Senate,
Washington, DC.

DEAR MR. STEWART: I enclose Judge Nixon's Answer to the Articles of Impeachment.

Very truly yours,

DAVID OVERLOCK STEWART.

[In the Senate of the United States, Sitting As a Court of Impeachment]

IN RE IMPEACHMENT OF JUDGE WALTER L. NIXON, JR.

ANSWER TO ARTICLES OF IMPEACHMENT

Judge Walter L. Nixon, Jr. of the Southern District of Mississippi, through his undersigned counsel, answers the Articles of Impeachment exhibited by the House of Representatives:

ARTICLE I

Article I alleges that Judge Nixon knowingly made a material false or misleading statement to a Federal grand jury in Hattiesburg, Mississippi, on July 18, 1984, to wit, that Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

Judge Nixon stated that his statement to the grand jury was, in fact, true and correct, and was not made

with any intent to mislead, deceive, or give false testimony. Judge Nixon's only relevant conversation with Mr. Holmes concerned allegations by Wiley Fairchild that Mr. Holmes was blackmailing him, and there never was a discussion of the Drew Fairchild case between him and Mr. Holmes.

Judge Nixon states further that his responses to the prosecutor's questions on that and other occasions were framed by his understanding, based on the prosecutor's statements, that their investigation concerned how Drew Fairchild's case was transferred from federal to state authorities; Judge Nixon had no knowledge of that transfer or how it occurred, never had any discussion or exchange with any individual on that subject until the investigation began, and understood questioning about the Drew Fairchild case to refer to that matter. Because this understanding also framed Judge Nixon's statements that are the subject of Impeachment Articles II and III, this paragraph of his Answer to Article I is hereby incorporated as part of the Answers to Articles II and III.

Judge Nixon states further that his conviction in court on this allegation was secured through the use of false and perjured testimony and by the suppression of exculpatory evidence, all in violation of basic fairness and the constitutional guarantee of Due Process of Law.

ARTICLE II

Article II alleges that Judge Nixon made material false or misleading statements to the grand jury on July 18, 1984, to wit, that he had nothing whatsoever officially or unofficially to do with the Drew Fairchild case in Federal court or state court, that he "never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, in any way influence anybody" with respect to the Drew Fairchild case.

Judge Nixon states that the allegation in Article II unfairly excerpts and takes his testimony out of context, and that the statements he actually made to the grand

jury were true and correct and were not made with any intent to mislead, deceive or give false testimony. Judge Nixon was never involved in the Drew Fairchild case in any court and never handled any part of it as a judge, which is the meaning of his unexcerpted grand jury testimony. The allegation that he falsely denied speaking to any official to "influence" them on the Drew Fairchild case evidently refers to his exchange with Forrest County District Attorney Paul Holmes about Wiley Fairchild's blackmail allegation. The evidence shows that Judge Nixon made no effort to so influence Mr. Holmes.

Judge Nixon states further that his conviction in court on an allegation similar to Article II was secured through the use of false and perjured testimony and by the suppression of exculpatory evidence, all in violation of basic fairness and the constitutional guarantee of Due Process of Law.

ARTICLE III

Article III alleges that Judge Nixon has, through fourteen enumerated statements, raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, disobeyed the laws of the United States and brought disrepute on the Federal courts and the administration of justice by the Federal courts.

As a threshold matter, Judge Nixon denies that this allegation—except for the allegation that he disobeyed the laws of the United States—states an impeachable offense under the Constitution, and he will present a Motion to Dismiss those other aspects of Article III.

A. Article III(1)

This section alleges that Judge Nixon made seven material false or misleading statements when he voluntarily submitted to an interview by the United States Department of Justice on April 19, 1984. These statements include:

(A) That Judge Nixon never discussed with Wiley Fairchild anything about Wiley's son's case. This statement was true and correct and was not made with any intent to mislead, deceive or provide false information. Moreover, the substance of this statement is virtually identical to grand jury testimony by Judge Nixon that was alleged to be false in Count II of his indictment, on which charge Judge Nixon was acquitted by the jury.

(B) That Wiley Fairchild never brought up his son's case. This statement was true and correct and was not made with any intention to mislead, deceive, or provide false information. Moreover, the substance of this statement is virtually identical to grand jury testimony by Judge Nixon that was alleged to be perjury in Count II of his indictment, on which charge Judge Nixon was acquitted by the jury. In addition, the identified statement is virtually identical to the statement charged in Impeachment Article III(1)(A), and therefore this allegation is duplicitious and redundant and should be stricken.

(C) That at the time of the interview Judge Nixon had no knowledge of the Drew Fairchild case and did not even know Drew Fairchild existed, except for what the judge previously read in the newspaper and what he learned from the questions in the interview. This specification does not accurately describe or refer to the actual statements by Judge Nixon, which statements were true and correct and were not made with any intent to mislead, deceive or provide false information.

(D) That nothing was done or nothing was ever mentioned about Wiley Fairchild's son. This allegation refers to a statement that is so vague that it is not possible to determine when, where, or by whom

Judge Nixon stated that nothing was done or mentioned about Wiley Fairchild's son. Such a vague and imprecise statement cannot be deemed a material false or misleading statement. To the extent that the substance of the statement can be determined at all, it was true and correct, and was not made with any intent to mislead, deceive or provide false information. The points raised in answer to Impeachment Article I, which concerns a very similar statement by Judge Nixon to the grand jury, are hereby incorporated in this Answer as well.

(E) That Judge Nixon had never heard about the Drew Fairchild case, except what he told the questioners in the interview, and certainly had nothing to do with the case. This allegation distorts Judge Nixon's actual statement and omits material portions of it in a misleading manner. Judge Nixon's actual statement was true and correct and was not made with any intent to mislead, deceive or provide false information.

(F) That Judge Nixon had done nothing to influence the Drew Fairchild case. This statement was true and correct and was not made with any intent to mislead, deceive or provide false information. Moreover, the allegation of falsity is virtually identical to that alleged in Article III(1)(E), making this allegation duplicitous and redundant.

(G) State prosecutor Paul Holmes never talked to Judge Nixon about the Drew Fairchild case. This allegation does not accurately describe Judge Nixon's statement, which was that Mr. Holmes did not discuss Drew Fairchild's case with Judge Nixon. Judge Nixon's actual statement was true and correct and was not made with intent to mislead, deceive or provide false information. The points raised in answer to Impeachment Article I, which concerns a very

similar statement by Judge Nixon to the grand jury, are hereby incorporated in this Answer as well.

B. Article III(2)

This section alleges that Judge Nixon made seven material false and misleading statements during his grand jury testimony on July 18, 1984. Five of those statements provide the basis for Impeachment Articles I and II: The statement identified in Impeachment Article III(2)(A) is also the basis for Article I; and the statements identified in Impeachment Articles III(2), (D), (E), (F), and (G) are also the basis for Article II. Consequently, it is multiplicitous, redundant and fundamentally unfair to include identical allegations in separate Impeachment Articles and Judge Nixon will submit a Motion to Dismiss these elements of Impeachment Article III on those grounds. With respect to those allegations in Impeachment Articles III(2) (A), (D), (E), (F) and (G), Judge Nixon hereby incorporates herein the same answers that are made in the Answers to Impeachment Articles I and II above.

Article III(2)(B) alleges that Judge Nixon falsely told the grand jury that to the best of his recollection he did not know of any reason he would have met with Wiley Fairchild after the Nixon-Fairchild oil and gas investment was finalized in February 1981. This allegation distorts and misstates Judge Nixon's actual grand jury testimony. Judge Nixon's actual testimony was true and correct and was not made with any intent to mislead, deceive, or provide false information.

Article III(2)(C) alleges that Judge Nixon falsely told the grand jury that he had given it all the information he had and that he could, and that he had withheld nothing during his grand jury testimony. This testimony also was true and correct and was not made with

any intention to mislead, deceive or provide false testimony.

FIRST AFFIRMATIVE DEFENSE

As an affirmative defense, Judge Nixon alleges that he was targeted for investigation and prosecution by executive officials who vindicatively resented his ruling against the government in the Petit Bois Island condemnation case, *United States* v. *717.42 Acres of Land,* (S.D. Miss., 1981). Such targeting and vindicative prosecution of judicial officers who rule against the government is repugnant to the constitutional separation of powers between the executive and judicial branches, subjects all judicial officers to improper pressure to rule in favor of the government and against private citizens, and works a fundamental distortion of our system of justice.

SECOND AFFIRMATIVE DEFENSE

As an affirmative defense, Judge Nixon alleges that the allegations against him were developed by executive officials who improperly coerced and induced witnesses to give false testimony, which false testimony has been knowingly introduced against him, in violation of Due Process of Law.

Wherefore Judge Nixon denies that any of the Articles of Impeachment states a valid basis for removing him from office under the Constitution and demands a trial before the full United States Senate as provided in the Constitution, Article I, Section 3.

Respectfully submitted,

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Date: May 31, 1989

VI. REPLICATION OF THE HOUSE OF REPRESENTATIVES TO THE ANSWER OF JUDGE WALTER L. NIXON, JR.

The PRESIDING OFFICER. The Chair submits to the Senate for printing in the Senate Journal and in the CONGRESSIONAL RECORD the Replication of the House of Representatives to the Answer of Judge Walter L. Nixon, Jr., to the articles of impeachment against Judge Nixon, pursuant to Senate Resolution 127, 101st Congress, 1st Session, which replication was received by the Secretary of the Senate on June 12, 1989, and the Chair further notes for the RECORD the receipt by the Secretary of the Senate of the House of Representatives' Request for Discovery, which will be forwarded to the committee appointed under Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials.

The replication is as follows:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 12, 1989.

Re impeachment of Judge Walter L. Nixon, Jr.

Mr. WALTER J. STEWART,
Secretary of the Senate, U.S. Senate, Capitol Building, Washington, DC.

DEAR MR. STEWART: Enclosed please find the Replication of the House of Representatives to the Answer of Judge Nixon to the Articles of Impeachment, and the House of Representatives' Request for Discovery, for filing in the above matter.

Sincerely,

PETER E. KEITH,
Assistant Special Counsel.

[In the Senate of the United States Sitting As a Court of Impeachment]

IN RE IMPEACHMENT OF JUDGE WALTER L. NIXON, JR.

REPLICATION OF THE HOUSE OF REPRESENTATIVES TO THE ANSWER OF JUDGE WALTER L. NIXON, JR. TO THE ARTICLES OF IMPEACHMENT

The House of Representatives, through its Managers and counsel, replies to the Answer to Articles of Impeachment of Respondent, Judge Walter L. Nixon, Jr., as follows:

ARTICLE I

The first paragraph of Respondent's Answer to Article I simply summarizes that Article and requires no response by the House of Representatives.

The House of Representatives denies each and every allegation set forth in the second, third and fourth paragraphs of Respondent's Answer to Article I.

ARTICLE II

The first paragraph of Respondent's answer to Article II simply summarizes that Article and requires no response by the House of Representatives.

The House of Representatives denies each and every allegation set forth in the second and third paragraphs of Respondent's Answer to Article II.

ARTICLE III

The first paragraph of Respondent's Answer to Article III simply summarizes that Article and requires no response by the House of Representatives.

With regard to all remaining paragraphs of Respondent's Answer to Article III, the House of Representatives denies each and every allegation in the Answer that denies the acts, knowledge, intent or wrongful conduct charged against Respondent in Article III, or that otherwise suggests that Respondent's grand jury testimony and interview statements were true and correct. The House of Representatives further states that Article III properly

alleges an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives incorporates by reference, in its Replication to Respondent's Answer to Article III, its response to the Answer of Respondent to Articles I and II.

1. Article III(1)

In addition to the foregoing, the House of Representatives responds to Respondent's Answer to the specific allegations of Article III(1) (A) through (G) as follows:

(A) The House of Representatives denies that the impeachment charge alleged in Article III(1)(A) is "virtually identical" to the Count II perjury charge on which Respondent was acquitted by the jury, and further denies that the jury verdict of acquittal on Count II of Respondent's criminal indictment in any way bars consideration by the Senate of Article III(1)(A).

(B) The House of Representatives denies that the impeachment charge alleged in Article III(1)(B) is "virtually identical" to the Count II perjury charge on which Respondent was acquitted by the jury, and further denies that the jury verdict of acquittal on Count II of Respondent's criminal indictment in any way bars consideration by the Senate of Article III(1)(B). The House of Representatives also denies that the allegations in subsections (A) and (B) of Article III(1) are "duplicitous and redundant." Subsections (A) and (B) of Article III allege two distinct false or misleading statements by Respondent, and both subsections should be considered and adjudicated by the Senate.

(C) The House of Representatives denies that Article III(1)(C) "does not accurately describe or refer" to actual statements by Respondent.

(D) The House of Representatives denies that the statement by Respondent referred to in Article III(1)(D) is "vague and imprecise," and states that the

Senate can and should deem this to be a material false or misleading statement.

(E) The House of Representatives denies that Article III(1)(E) "distorts" or "omits material portions" of Respondent's actual statement in a "misleading manner."

(F) The House of Representatives denies that the allegations in subsections (E) and (F) of Article III(1) are "duplicitous and redundant." Subsections (E) and (F) of Article III(1) allege two distinct false or misleading statements by Respondent, and both subsections should be considered and adjudicated by the Senate.

(G) The House of Representatives denies that Article III(1)(G) "does not accurately describe" Respondent's statement during the April 1984 interview.

2. Article III(2)

In addition to the foregoing, with regard to Respondent's Answer to the specific statements alleged in Article III(2), the House of Representatives agrees that the statement of Respondent set forth in Article I is also the basis for Article III(2)(A), and that the statements of Respondent set forth in Article II are also the basis for Article III(2) (D), (F), and (G). The House of Representatives denies that the statement of Respondent set forth in Article II is also the basis for Article III(2)(E), inasmuch as the specific statement set forth in Article III(2)(E) was not an "underscored material declaration" in Count IV of Respondent's criminal indictment found by the jury to be false. However, the House of Representatives acknowledges that the statements set forth in Articles II and III(2)(E) were each part of Respondent's response during his grand jury testimony to the question, "Judge, do you have anything you want to add?"

The House of Representatives denies that Article III(2) is "multiplicitous, redundant and fundamentally unfair." Article III properly alleges an impeachable offense, is distinct from Articles I and II, and should be considered and

adjudicated by the Senate. The House of Representatives denies that any portion of Article III is defective, and will oppose any motion to dismiss all or part of Article III.

The House of Representatives denies that Article III(2)(B) "distorts and misstates" Respondent's actual grand jury testimony.

First Affirmative Defense

The House of Representatives denies each and every allegation of this purported defense. The House of Representatives further states that this purported defense is not relevant to the Impeachment Articles and is insufficient as a matter of law. This purported defense of "vindictive prosecution" is a question particularly appropriate for judicial resolution and has been finally resolved by the judicial branch against Respondent without pending appeal. Respondent should thereby be estopped from raising this issue during the impeachment proceedings. The House of Representatives further asserts that such "vindictive prosecution," even if true as alleged, cannot excuse or be a defense to the misconduct by Respondent set forth in the Articles of Impeachment.

Second Affirmative Defense

The House of Representatives denies each and every allegation of this purported defense. The House of Representatives asserts that this purported defense is not relevant to the Impeachment Articles and is insufficient as a matter of law. This purported defense of prosecutorial misconduct is a question particularly appropriate for judicial resolution and has been resolved by the judicial branch against Respondent. Respondent should thereby be estopped from raising this issue during the impeachment proceedings. The House of Representatives further asserts that such prosecutorial misconduct, even if true as alleged, cannot excuse or be a defense to the misconduct by Respondent set forth in the Articles of Impeachment.

Wherefore, the House of Representatives states that each of the Articles of Impeachment presents a valid basis for removing Respondent from office. Each of the three Articles should be considered and adjudicated by the Senate.

With regard to Respondent's demand for "trial before the full United States Senate," the House of Representatives denies that Article I, Section 3 of the Constitution requires that evidence be taken by the full Senate, rather than by a Committee formed pursuant to Senate Impeachment Rule XI.

Respectfully submitted,

The U.S. House of Representatives,
ALAN I. BARON,
Special Counsel.

Managers of the House of Representatives: Jack Brooks, Don Edwards, Benjamin L. Cardin, F. James Sensenbrenner, William E. Dannemeyer.

Impeachment Trial Staff: Alan I. Baron, Special Counsel; Peter E. Keith, Assistant Special Counsel.

House Judiciary Committee Staff Participating in the Impeachment Proceedings: William Jones, General Counsel; Daniel Freeman, Counsel; Catherine A. LeRoy, Counsel; Colleen Kiko, Counsel.

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